

Deficiency Progress Report – Update 2

Report Submitted: 1-21-09

CUPA: Nevada County Environmental Health

Evaluation Date: June 11 and 12, 2008

Evaluation Team:

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All Deficiencies have been corrected.

1. Deficiency: The CUPA does not have the following Unified Program (UP) administrative procedures:

- Public participation procedures
- Records maintenance procedures that include the identification of the records maintained, minimum retention times, and archive procedures.
- Procedures for responding to requests for information from government agencies with a legal right to access the information, or from emergency responders, including methods to prevent the release of confidential and trade secret information.
- Procedures for forwarding the HMRRP information in accordance with Health and Safety Code sections 25503.5(d) and 25509.2(a)(3).
- Financial management procedures

Preliminary Corrective Actions: By September 12, 2008, the CUPA will complete its administrative procedures.

The CUPA will submit a copy to Cal/EPA with its first progress report.

CUPA's 1st Update (10-14-08): See administrative procedures under separate attachments.

Cal/EPA's 1st Response: Cal/EPA appreciates the progress the CUPA has made toward correction of this deficiency. With that said, there are some elements of the administrative procedures that need to be either

corrected or expanded on. The procedures should have enough detail so that new staff can read it and know what to do.

- **Records Maintenance:** The procedures describe the records that are stored in Envision, but they do not include procedures to maintain hardcopy documents. The procedures do not describe how hardcopy data is transferred to the CUPA's database. A more detailed description of the records maintained is needed, for example: permits, self audits, inspection reports, UPCFs, annual summary reports, single fee invoices, enforcement files. Also, the CUPA's minimum retention time for records of 3 years is not in conformity with the regulatory minimum requirement of 5 year for certain information. Title 27, Section 15185 (c) states the following:

A CUPA shall retain the following information for a minimum of five years:

- (1) Copies of self-audits, inspection reports, enforcement files, and UPCFs.*
- (2) All records related to hazardous waste enforcement actions from the date the enforcement action is resolved.*
- (3) Detailed records used to produce the summary reports submitted to the state.*
- (4) Surcharge billing and collection records following closure of any billing period, or until completion of any audit process, whichever is longer.*

The archive procedures do not tell the reader how documents are archived.

- **Forwarding HMRRP Information:** This procedure does not specify the format(s) the CUPA will use when forwarding the information such as CDs, hardcopy (by fax or mail), email, etc.
- **Financial Management:** The CUPA does not have financial management procedures that detail the management of the single fee system, the fee accountability program, and the surcharge collection and reimbursement program in compliance with title 27. The procedure sent did not contain a descriptive financial management process for any of the three financial elements mentioned above.

Please revise the elements of the administrative procedures mentioned in the bullet points. Submit the revision as an email attachment along with the CUPA's 2nd progress report.

CUPA's 2nd Update (1-21-09): The following Update includes revisions and additions (*italics*), and attached documentation where substantiation is required:

(1) Nevada County Environmental Health (NCDEH) CUPA public participation procedures:

(A) NCDEH ensures receipt and consideration of comments from regulated businesses and the public.

(B) NCDEH coordinates, consolidates, and makes consistent locally required public hearings related to any Unified Program element.

(C) NCDEH coordinates, consolidates, and makes consistent public notices for activities related to any Unified Program element by posting information in the local paper and posting on the department web page.

(2) Nevada County Environmental Health (NCDEH) CUPA records maintenance procedures:

(A) NCDEH identifies records maintained through Envision Connect to include Service Requests, Program Elements, and Facility Numbers.

Hardcopy data transfer to CUPA database & hardcopy filing:

- 1. Activity data entered by employee daily via program elements, service codes, comments, service code results, required actions, invoice numbers, and activity totals to include enforcement/violation details for specified program.*
- 2. Results are extracted from CUPA database (envision connect) via report generator.*
- 3. Specific hardcopy records, to include inspection reports, UPCF's, single fee invoices, enforcement files, and general facility data, are filed and kept in the CDA file library for employee access.*
- 4. Annual CUPA summary reports are kept with the CUPA program manager.*

(B) Minimum retention time for records is 5 years after closure.

The following information is retained for a minimum of five years:

- 1. Copies of self-audits, inspection reports, enforcement files, and UPCF's.*
- 2. All records related to hazardous waste enforcement actions from the date the enforcement action is resolved.*
- 3. Detailed records use to produce the summary reports submitted to the state (from envision connect).*
- 4. Surcharge billing and collection records following closure of any billing period, or until completion of any audit process, whichever is longer.*
- 5. Records are archived and kept in the CDA file library. Access and 'check out/check in' of files is recorded through the 'Back Track' computer system.*

(C) Archive procedures include additional retention time of five years post minimum retention times.

(D) Records disposal. All records are shredded and paper is recycled.

(3) NCDEH Policy 70.12.01 (attached) provides procedures for responding to requests for information from the public, from government agencies with a legal right to access the information, and from emergency responders, including methods to prevent the release of confidential and trade secret information. In the event of an emergency, either the NCDEH Director, Hazardous Materials Program Manager, and/or designated staff (in that order) can release requested information.

(4) NCDEH CUPA procedures for forwarding the HMRRP information in accordance with Health and Safety Code sections 25503.5(d) and 25509.2(a)(3).

(A) NCDEH CUPA provides all information obtained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.

(B) NCDEH CUPA forwards a copy of the notification and inventory to those agencies that share responsibility for emergency response.

The notification format process consists of:

- 1. Receipting the HMRRP data,*
- 2. Review by NCDEH CUPA staff*
- 3. Scanning the required data (HMRRP/Inventory, etc.) to NCDEH docushare data base,*
- 4. Emailing the specified data to the appropriate agencies for their review and acceptance.*

(C) Businesses which are required to comply with this chapter do so on one form, with one fee and one inspection. NCDEH CUPA forwards the data collected, within 15 days of receipt and confirmation, with other local agencies in a format easily interpreted by those agencies with shared responsibilities for protection of the public health and safety and the environment.

(5) NCDEH CUPA financial management procedures (Envision Connect) include:

(A) A single fee system in compliance with section 15210;

(B) A fee accountability program in compliance with section 15220; and

(C) A surcharge collection and reimbursement program in compliance with section 15250.

(6) Financial Management Procedures Detailing the Management of (1) The Single Fee System, (2) The Fee Accountability Program, and (3) The Surcharge Collection and Reimbursement Program.

(See attached Appendixes – CUPA Audit Response, Financial Management)

Cal/EPA's 2nd Response: Cal/EPA considers this deficiency corrected.

2. Deficiency: The CUPA does not have an Inspection and Enforcement (I and E) plan. The I and E plan must contain the following elements:

- Provisions for administering all program elements.
- A schedule of the inspection frequencies to be conducted that shall, at a minimum, meet the inspection frequencies mandated in statutes.
- Enforcement notification procedures that ensure appropriate confidentiality; and coordination and timely notification of appropriate prosecuting agency (ies).
- Identification of all available enforcement options (i.e. red tag, civil, criminal, AEO).
- Uniform and coordinated application of enforcement standards.
- Identification of penalties and enforcement actions that are consistent and predictable for similar violations and no less stringent than state statute and regulations.
- A graduated series of enforcement actions that may be taken by the UPAs, based on the severity of the violation.
- Provisions for multi-media enforcement.
- A description of how the CUPA minimizes or eliminates duplication, inconsistencies, and lack of coordination within the inspection and enforcement program.
- Provisions for coordinating enforcement efforts between the CUPA and its participating agencies.

Preliminary Corrective Actions: By December 12, 2008, the CUPA will complete its I and E plan that include all the required elements. Please refer to the I and E plan guidance that can be found on the Cal/EPA web site.

The CUPA will submit a copy to Cal/EPA with its first progress report.

CUPA's 1st Update (11-14-08): See I and E Plan under separate attachments.

Cal/EPA's 1st Response: Cal/EPA appreciates the progress the CUPA has made toward correction of this deficiency. With that said, there is one element of the I and E plan that needs to be corrected.

- **Inspection Frequency Schedule:** Although there is no mandated inspection frequency for hazardous waste generators, the CUPA is required to develop and implement an I and E plan that contains a scheduled inspection frequency for hazardous waste generators. Please include the CUPA's scheduled inspection frequency for hazardous waste generators in the I and E plan. It might be best to simply add a column to the mandated frequency table that is labeled something like "Scheduled Inspection Frequency".

CUPA's 2nd Update (1-21-09): The Inspection Frequency Schedule has been revised to demonstrate the following:

A. Frequency and Coordination of Inspections

1. Required minimum mandated inspection frequencies are:

Program	Frequency
HMRRP Health and Safety Code section 25508, subdivision (b)	Once every 3 years
CalARP* Health and Safety Code section 25537, subdivision (a)	Once every 3 years
UST Facilities Health and Safety Code section 25288, subdivision (a)	Once per year
AST Facilities Health and Safety Code section 25270.5(a))	Once every 3 years
Generators (All)**	Once every 3 years
RCRA Large Quantity Generators**	Once every 3 years
Certified Appliance Recyclers** Health and Safety Code sections 25211 – 25214)	Once every 3 years
Universal Waste** Household (Cal. Code Regs., tit. 22, § 66273.8, subd. (b)) CESQUWG (Cal. Code Regs., tit. 22, § 66273.8, subd. (c)) SQHUW (Cal. Code Regs., tit. 22, §§ 66273.10 - 66273.21) LQHUW (Cal. Code Regs., tit. 22, §§ 66273.30 - 66273.41)	Once every 3 years
Silver only** Health and Safety Code section 25143.13	Once every 3 years
On-site Hazardous Waste Treatment (All)** Health and Safety Code section 25201.4, subdivision (b)(2)	Every 3 years
Permit By Rule (PBR) Conditionally Authorized (CA) Conditionally Exempt (CE) Health and Safety Code section 25201.4, subdivision (b)(2)	Every 3 years Every 3 years Every 3 years
Permit by Rule for Household Hazards Waste Health and Safety Code section 25201.4, subdivision (b)(2)	Every 3 years

Cal/EPA's 2nd Response: Cal/EPA considers this deficiency corrected.

3. **Deficiency:** The CUPA does not have a written plan to resolve fee disputes that arise between a regulated business and the CUPA, or between a regulated business and the state regarding the state surcharge.

Preliminary Corrective Actions: By September 12, 2008, the CUPA will complete its fee dispute resolution procedure.

The CUPA will submit a copy to Cal/EPA with its first progress report.

CUPA's 1st Update (10-14-08): See fee dispute resolution procedure under separate attachments.

Cal/EPA's 1st Response: Cal/EPA appreciates the progress the CUPA has made toward correction of this deficiency. The fee dispute resolution procedure states that the CUPA "attempts to resolve disputes involving the surcharge in the same manner used to resolve local fee disputes." This would be acceptable if I knew the manner in which the CUPA resolved local fee disputes.

On the 2nd progress report, include the CUPA's procedure for resolving local fee disputes.

CUPA's 2nd Update (1-21-09): The following Update includes revisions and additions (*italics*), and attached documentation where substantiation is required:

Nevada County Environmental Health (NCDEH) CUPA fee dispute resolution plan to resolve fee disputes that arise between the CUPA and PA's, between a regulated business and either the PA or the CUPA, or between a regulated business and the state regarding the state surcharge is as follows:

NCDEH CUPA attempts to resolve disputes involving the surcharge in the same manner used to resolve local fee disputes. Those disputes regarding the state surcharge that cannot be resolved locally may be referred to the Secretary for resolution.

Disputes referred to the Secretary shall be in writing and shall include a recommendation for resolution.

Fee Dispute

Nevada County Administrative Code, Article 42. Community Development Agency

See attached Document "Fee Dispute" w/ Appendix G.

Cal/EPA's 2nd Response: Cal/EPA considers this deficiency corrected.

4. **Deficiency:** The CUPA did not have a narrative self audit of its performance in fiscal year (FY) 06/07.

Preliminary Corrective Actions: By September 30, 2008, the CUPA will conduct a self audit of its performance for FY 07/08. The CUPA will complete a self audit by September 30 of each year.

Submit the CUPA's FY 07/08 narrative self audit to Cal/EPA by September 30, 2008.

CUPA's 1st Update (10-14-08): See FY 07/08 narrative self audit under separate attachments.

Cal/EPA's 1st Response: In future narrative self audits, the CUPA should include a narrative summary of the effectiveness of its single fee system and the annual review and update of its fee accountability program. Cal/EPA considers this deficiency corrected.

5. **Deficiency:** The CUPA did not complete its FY 05/06 Annual Summary reports.

Preliminary Corrective Actions: By September 30, 2008, the CUPA will complete its FY 07/08 Annual Summary reports.

The CUPA will submit a copy to Cal/EPA with its first progress report.

CUPA's 1st Update (10-14-08): See Annual Summary Reports under separate attachments.

Cal/EPA's 1st Response: Cal/EPA considers this deficiency corrected.

6. **Deficiency:** The CUPA is not ensuring that businesses are submitting their hazardous materials inventory or a certification statement to the CUPA on or before March 1 of each year.

During the file review, 70% of the files reviewed lacked a current inventory or certification.

Preliminary Corrective Actions: By September 12, 2008, the CUPA shall submit an action plan outlining how the CUPA will request inventory or certification statements from the businesses.

CUPA's 1st Update: It has been the practice of the NCDEH to tell all new businesses upon permitting about the requirement to submit an Annual Certification Form for the Hazardous Materials Business Plan. Last year a "blast fax" was sent to all permittees reminding them that the Annual Certification Form along with any correlating documents was due.

This fiscal year the Annual Certification Form was sent along with the annual invoice to each regulated business to ensure the forms would be completed and submitted with the permit fee. The Department has assigned a Hazmat Tech to monitor HMBP compliance issues including collection and tracking of certification forms. The Tech will follow up with those businesses that do not submit the required forms.

Cal/EPA's 1st Response: Cal/EPA and OES consider this deficiency corrected.

- 7. Deficiency:** The CUPA has not performed any annual CalARP performance audits.

Preliminary Corrective Actions: By September 12, 2008, the CUPA shall perform an annual CalARP performance audit. At the CUPA's option, this information may be included with the annual Title 27 self audit.

CUPA's 1st Update (10-14-08): See FY 07/08 CalARP Performance Audit under separate attachments.

Cal/EPA's 1st Response: Cal/EPA and OES consider this deficiency corrected.

- 8. Deficiency:** The CUPA is not forwarding the business plan information collected to other local agencies in a format easily interpreted by those agencies with shared responsibilities for protection of the public health and safety and the environment. Per a discussion with Penn Valley Fire, information has not been forwarded consistently and is not in a format easily interpreted.

Preliminary Corrective Actions: By September 12, 2008, the CUPA shall submit an action plan outlining how the CUPA will forward data collected in a format easily interpreted by agencies with shared responsibilities for protection of the public health and safety.

CUPA's 1st Update (10-14-08): The NCDEH uses an electronic document management system called Flowport. After receiving and approving the HMBP, NCDEH staff scans the documents into the Flowport system, which in turn sends the documents via email to the designated Fire Department recipient for review. The forms that are sent include:

Business Owner Operator Identification Form, Business Activities Form, Site Plan and Hazardous Materials Inventory Statement Form. A cover letter to the governing fire agency accompanies the documents and includes a section for the Fire Department official to either concur with the HMBP as submitted or request more information from the permittee. Currently Fire Department officials fax the concurrence letter to the NCDEH which is filed into the HMBP binder. If the Fire Department requires additional information, the NCDEH Technician obtains the information from the permittee.

(attachment: Fire Department referral cover letter, sent hard copy)

Cal/EPA's 1st Response: Cal/EPA and OES consider this deficiency corrected.

- 9. Deficiency:** The CUPA is not implementing and enforcing the requirements of the business plan program for all handlers subject to the program. Specifically, the CUPA is neither regulating nor properly exempting agricultural handlers subject to the business plan program.

Preliminary Corrective Actions: By September 12, 2008 the CUPA shall submit an action plan outlining how the CUPA will inspect all of the regulated businesses including agricultural handlers once every three years.

CUPA's 1st Update (10-14-08): A Hazardous Materials Farm Business Exemption Fact Sheet and the required exemption forms are posted on the NCDEH website. The NCDEH is working with the Department of Agriculture to identify exempted facilities and complete the exemption process procedures to ensure an efficient tracking system.

(attachment: 'Hazardous Materials Farm Business Exemption Fact Sheet' posted on NCDEH Docushare website; sent with hard copy)

Cal/EPA's 1st Response: Cal/EPA and OES consider this deficiency corrected.

- 10. Deficiency:** The CUPA is exempting carbon dioxide without following the correct process for allowing this exemption.

Preliminary Corrective Actions: By September 12, 2008, the CUPA shall submit an action plan outlining how the CUPA will exempt carbon dioxide correctly or start regulating the hazardous material.

CUPA's 1st Update (10-14-08): Under advisement from California State OES, Nevada County Environmental Health (NCDEH) will no longer

exempt carbon dioxide from reportable inventories pursuant to the provisions of Chapter 6.95 HSC. Accordingly, NCDEH will conduct a review of facilities with potential handling of CO2 in regulatory quantities and subsequently permit such facilities in accordance with said chapter. NCDEH estimates review and permitting of potentially inventoried facilities to be completed within 180 days.

Cal/EPA's 1st Response: Cal/EPA and OES consider this deficiency corrected.

11. Deficiency: The CUPA does not have a CalARP dispute resolution procedure.

Preliminary Corrective Actions: By September 12, 2008 the CUPA shall submit a CalARP dispute resolution procedure to Cal/EPA.

CUPA's 1st Update (10-14-08): See CalARP dispute resolution procedure under separate attachments.

Cal/EPA's 1st Response: Cal/EPA and OES consider this deficiency corrected.

12. Deficiency: The CUPA area plan has not been updated since 1993.

Preliminary Corrective Actions: By September 12, 2008 the CUPA shall submit an action plan outlining how the CUPA will update the Area Plan.

CUPA's 1st Update (10-14-08): Subsequent to the 07/08 audit and in response to deficiency no.12, NCDEH has applied for and has successfully been awarded a \$54,340.00 Hazardous Materials Emergency Preparedness grant from the Governor's Office of Emergency Services, Hazardous Materials Unit. In accordance with this grant application, the Area Plan for Nevada County will be updated for the period October 1, 2008 through September 30, 2009.

Cal/EPA's 1st Response: Cal/EPA and OES consider this deficiency corrected.

13. Deficiency: The CUPA has no procedure for disclosing confidential information to doctors, officers or government employees in connection with official duties.

Preliminary Corrective Actions: By September 12, 2008 the CUPA shall submit a confidential information procedure.

CUPA's 1st Update (10-14-08): See Procedures for the Release and Disclosing of Confidential Information to Doctors and Government Agencies under separate attachments.

Cal/EPA's 1st Response: Cal/EPA and OES consider this deficiency corrected.

14. Deficiency: The CUPA did not meet the annual inspection frequency for UST facilities during 2007. In 2007, the CUPA completed UST compliance inspections for only 76% of the regulated UST facilities. The CUPA's goal is to meet the inspection frequencies and conduct compliance inspections during annual monitoring certifications. The CUPA has met their inspection frequency in prior years and the decline in inspections this year has been due to loss of staff and reassignment of some staff time to other departmental duties. The CUPA stated that they are using a risk-based inspection process. The CUPA is inspecting facilities with the highest potential for environmental impacts and recalcitrant facilities first. This provides maximum protection for the environment yet may reduce compliance frequencies.

Preliminary Corrective Actions: By September 30, 2009, the CUPA will conduct compliance inspections for all of its UST facilities. This should be reflected on their Annual Summary Report 3 and Semi-Annual Report 6.

CUPA's 1st Update (10-14-08): As noted by audit findings, NCDEH did not meet the mandated inspection frequency for UST compliance inspections during the past year. NCDEH's goal is to meet the 100% required inspection frequency and to conduct the compliance inspections during annual monitoring certification tests. NCDEH has met the inspection frequency in prior years however staffing for this inspection period had been reduced significantly.

Subsequent to the audit, NCDEH has taken immediate action to reassign another staff person into the UST program for the western county. As of this date, this staff person has completed training in both the beginning UST training course and the advanced UST training course provided by the SWRCB and will begin field training in USTs in order to be qualified to become ICC certified in UST inspections within six months.

Cal/EPA's 1st Response: Cal/EPA and the SWRCB consider this deficiency corrected.

15. Deficiency: The CUPA is not reporting Significant Operational Compliance (SOC) on Report 6 in a manner consistent with federal guidelines.

Preliminary Corrective Actions: The CUPA will report SOC as required on Semi-Annual Report 6s.

CUPA's 1st Update (10-14-08): NCDEH has implemented reporting SOC in accordance with section 2713 (c) (4) as required. This is reflected in NCDEH's Semi Annual Report #6 submitted this past month for Jan 08 to June 08, where NCDEH listed 5 SOC violations and 3 Red Tags during that period.

Cal/EPA's 1st Response: Cal/EPA and the SWRCB consider this deficiency corrected.